88-1294

No. ———

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

PRAMOD K. SHARMA,
Petitioner,

v.

LOCKHEED ENGINEERING AND MANAGEMENT SERVICES COMPANY, INC.,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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QUESTIONS PRESENTED

The district court denied petitioner the opportunity to depose respondent's president because the court *assumed* that the president of a corporation would not have any information relevant to an individual employee's discrimination claims and that the president would be unduly burdened by having his deposition taken. The district court thereafter entered summary judgment against petitioner for failing to produce sufficient evidence to support his discrimination claims. The court of appeals conceded that respondent's president may have had information relevant to petitioner's claims, but held that petitioner failed in his burden to demonstrate that such information was not already or more easily available from other sources. Accordingly, that court affirmed both the district court's refusal to permit discovery against respondent's president and the grant of summary judgment against petitioner. The questions presented are:

1. Whether, contrary to the decisions in other circuits, the courts below erroneously held that a party seeking discovery from an officer of an opposing party has the burden to show in advance that the discovery would be relevant, not burdensome to the officer, and not readily obtainable elsewhere.

2. Whether a rule requiring a party to make such an advance showing is contrary both to this Court's well-established policy favoring broad discovery and to decisions in other circuits.

3. Whether the special rule adopted by the courts below unjustifiably favors presidents of corporations at the expense of potentially injured employees and offends fundamental principles of fairness and equal justice.

PARTIES TO THE PROCEEDINGS

Petitioner Pramod K. Sharma was plaintiff in the district court and appellant in the court of appeals. Respondent Lockheed Engineering and Management Services Company, Inc. was defendant in the district court and appellee in the court of appeals.

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PRAMOD K. SHARMA,

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LOCKHEED ENGINEERING AND MANAGEMENT SERVICES COMPANY, INC.,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Pramod K. Sharma petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit in this case.

OPINIONS BELOW

The opinion of the Court of Appeals for the Fourth Circuit is unreported and is reprinted in the appendix hereto ("App.") at 1a. The opinion of the District Court for the District of Maryland (Smalkin, J.) is unreported and is reprinted at App. 11a.

JURISDICTION

The judgment of the Court of Appeals was entered on November 7, 1988. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

PERTINENT FEDERAL RULES

Federal Rule of Civil Procedure 26(b)(1) provides, in pertinent part:

> Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party * * * . It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

Federal Rule of Civil Procedure 26(c) provides, in pertinent part:

> Upon motion by a party * * * and for good cause shown, the court in which the action is pending * * * may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense * * * .

STATEMENT OF THE CASE

In 1981, petitioner Pramod K. Sharma, whose national origin is Indian, began employment with respondent Lockheed Engineering and Management Services Company, Inc. ("Lockheed") at its Houston, Texas facility. App. 3a. Because of this employment, Mr. Sharma acquired a house in Houston; in the fall of 1982, however, Lockheed informed him that he would be laid off. App. 3a.

Lockheed thereafter offered to transfer Mr. Sharma to its facility in Greenbelt, Maryland. When Mr. Sharma expressed concerns about his house, George Brown, a Lockheed supervisor in Maryland, represented to him that Lockheed would help him sell his house and would purchase it if he was unable to sell it. App. 3a; Court

of Appeals Joint Appendix ("Ct. App. J.A.") 250. Relying on Brown's representation, Mr. Sharma accepted the transfer and began working at Lockheed's Greenbelt, Maryland facility in November 1982. App. 3a; Ct. App. J.A. 250.

In January 1983, Mr. Brown gave Mr. Sharma a copy of Lockheed's written policy concerning relocation costs, which was signed by the company's president, Robert B. Young, and a "Relocation Order" that described the expenses that Lockheed would cover. App. 4a; Ct. App. J.A. 151-58. Although neither of the documents referred to Lockheed's purchasing of Mr. Sharma's house, Mr. Brown reaffirmed that promise on several occasions. App. 4a; Ct. App. J.A. 250-51. However, every time Mr. Sharma requested that Lockheed purchase his house, nothing was done. App. 4a; Ct. App. J.A. 251. In June 1983, Lockheed gave Mr. Sharma an accounting concerning his move to Maryland which made no reference to purchasing his house.[1] App. 4a; Ct. App. J.A. 251.

While working at Lockheed's Greenbelt, Maryland facility, Mr. Sharma continued to request that the company purchase his house. He was thereafter transferred from one department of the Greenbelt facility to another, disciplined, and ultimately terminated in October 1985. App. 12a.

On August 8, 1986, Mr. Sharma filed a discrimination action against Lockheed pursuant to 42 U.S.C. §§ 1981

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[1] Mr. Sharma explained Lockheed's promise to purchase his house and repeated refusal to take any action concerning that promise in a declaration attached to his opposition to Lockheed's motion for summary judgment. Ct. App. J.A. 249-55. Both the district court and the court of appeals assumed Mr. Sharma's assertions concerning Lockheed's purchasing of his house to be true for the purpose of deciding the issues raised with respect to his discrimination claims. *See* 11a-15a; 6a-8a. Accordingly, this Court may also assume his assertions to be true for the purpose of considering Mr. Sharma's petition for a writ of certiorari.

and 2000e-5 (1982). In its Memorandum granting Lockheed's motion for summary judgment, the district court addressed Mr. Sharma's three major claims of discrimination: (1) that Lockheed discriminated against him by failing to purchase his Houston house; (2) that his transfer from one department to another was discriminatory and in retaliation for his complaints about Lockheed's failure to purchase the house; and (3) that his discipline and termination was discriminatory and in retaliation for his complaints. App. 11a-12a.

The district court granted summary judgment on these claims after finding that Mr. Sharma was "unable to adduce evidence, rising above his own unsupported allegations of discriminatory motive, * * * that similarly situated non-minority persons were treated differently (more favorably)." App. 13a. Specifically, with respect to Mr. Sharma's claim concerning the purchase of his house, the district court found Mr. Sharma's declaration that he had reason to believe that Lockheed had purchased the houses of other similarly-situated employees to be insufficient to withstand summary judgment for two reasons: 1) the declaration was not based "on personal knowledge," and 2) the declaration "fail[ed] to identify the persons allegedly more favorably treated as being non-minority persons." App. 13a-14a.

Yet, the district court had previously denied Mr. Sharma the opportunity to conduct discovery that was reasonably calculated to obtain the very evidence that the court found to be lacking for summary judgment purposes. During discovery Mr. Sharma sought from Lockheed information concerning its relocation policy, particularly whether the company had on prior occasions agreed to purchase the houses of similarly-situated employees who had been transferred. App. 4a. However, two employees from Lockheed's Maryland facility deposed by Mr. Sharma had no information on this subject.

The first such employee was Adrienne Allen, the personnel manager of the Maryland facility, who had been specifically designated by Lockheed itself as a person having knowledge of the company's relocation policy. She testified that she did not know if Lockheed had ever purchased an employee's home upon transfer and that she was unfamiliar with the personnel procedures of the Houston facility. App. 4a-5a. Accordingly, Mr. Sharma sought to depose both Mr. Young, the president of Lockheed in the Houston facility who had signed the pertinent relocation policy, and Barry Forster, a department manager at the Maryland facility—the only two individuals still employed by Lockheed whom Mr. Sharma believed had information concerning the purchase of houses. Lockheed objected to the taking of both depositions.

With respect to Mr. Young's deposition, Lockheed sought a protective order prohibiting the deposition based on an affidavit of Mr. Young. Ct. App. J.A. 534-35. In that affidavit, Mr. Young stated that he had never met Mr. Sharma and that he had no personal knowledge of either Mr. Sharma's employment with Lockheed or "the allegations contained in Mr. Sharma's Complaint." *Id.* at 534. However, in his complaint, Mr. Sharma had only generally alleged discrimination with respect to Lockheed's agreement concerning his relocation, and had not specifically alleged that the agreement included a promise to purchase his house or that Lockheed had purchased the houses of similarly-situated employees. *See id.* at 8-16. Accordingly, in his affidavit Mr. Young did *not* deny having knowledge about such agreements with respect to other employees.

At an April 27, 1987 hearing on Lockheed's request for a protective order, the district court found that because "there [was] a request for a protective order, * * * it [bec me Mr. Sharma's] burden to establish" the relevance of the testimony sought from Mr. Young. Ct. App. J.A. 461. The district court therefore requested a proffer

of the relevant evidence that Mr. Sharma expected to obtain from Mr. Young. *Id.* In response, Mr. Sharma's trial counsel explained that "we have reason to believe and we think that the testimony will show that other employees of * * * Lockheed [have] actually been paid to relocate and houses have actually been purchased as promised with respect to Mr. Sharma." *Id.* at 462.

The district court rejected the proffer as insufficient because Mr. Young "is the president of a huge corporation who cannot reasonably be expected to have any personal knowledge of anything at issue in this law suit involving one of many thousands of employees * * *." Ct. App. J.A. 472. Moreover, even though Lockheed had not ever raised the issue or adduced any evidence to support it, the court assumed that taking "the deposition of the president of a major corporation would be unduly burdensome * * *." *Id.* Consequently, the district court granted Lockheed's request for a protective order and prohibited Mr. Sharma from taking Mr. Young's deposition. *Id.* Moreover, the court ordered Lockheed to make Mr. Forster available for a deposition without even addressing the issues of relevance or burdensomeness. Ct. App. J.A. 475. At that deposition, which occurred shortly before discovery was scheduled to close, Mr. Forster, like Ms. Allen, was unable to provide any information concerning Lockheed's purchase of houses. App. 5a.

Immediately after Mr. Forster's deposition failed to produce the information he sought, Mr. Sharma filed a motion to extend the time for discovery to give him the opportunity to depose both George Brown and his supervisor at the Maryland facility. Ct. App. J.A. 588. On the same day, the district court granted Mr. Sharma's motion, but four days later denied the extension by granting Lockheed's motion for reconsideration. *Id.* at 590. One week later, the district court entered another order expressly reversing its initial ruling granting Mr. Sharma more time to conduct discovery. *Id.* at 592.

Through its rulings, the district court denied Mr. Sharma the opportunity to obtain from Mr. Young either information that Lockheed had on other occasions purchased the houses of transferred employees, or the identity of people at Lockheed who would have such information. Moreover, it denied Mr. Sharma the opportunity to pursue other avenues of discovery. Thereafter, as previously stated, the district court entered summary judgment against Mr. Sharma for failing to produce evidence that similarly-situated, non-minority employees were treated more favorably in terms of having their houses purchased by Lockheed upon transfer. App. 13a-14a.

The court of appeals upheld the district court's ruling prohibiting the deposition of Mr. Young and affirmed summary judgment in Lockheed's favor. In upholding the protective order, the court conceded that a deposition of Mr. Young might have adduced evidence that "indirectly supported Sharma's Title VII claim by establishing that, at least under some circumstances, Lockheed does pay real estate fees or purchase employees' homes as part of its relocation program." App. 7a. Nevertheless, after specifically noting that the deponent who had been designated by Lockheed (Ms. Allen) did *not* have information to support Mr. Sharma's claim, the court found "the protective order was justified" because Mr. Sharma failed to demonstrate that "any information regarding discrimination against [him] was not already and more easily available than through the deposition of Lockheed's president." App. 7a-8a. For the same reasons, the court also determined that a deposition of Lockheed's president would be burdensome, even though the court acknowledged that Lockheed had not adduced *any evidence* on the issue. The court reasoned that the deposition of a corporate president is inherently burdensome if the relevant evidence to be obtained is readily available elsewhere. *Cf.* App. 8a.

REASONS FOR GRANTING THE WRIT

By placing on a party seeking discovery the burden of demonstrating why that discovery would be relevant, would not be burdensome, and is not readily obtainable elsewhere, the decision below conflicts with the decisions of courts in other circuits which require the party *resisting* discovery to meet a heavy burden to show good cause as to why discovery should not take place. Moreover, restricting the ability of an individual to obtain relevant discovery from a corporation's president conflicts with this Court's well-established rule favoring broad discovery, which other circuits have found to be particularly appropriate in discrimination cases. Finally, by creating a different, more stringent, standard that an individual must satisfy to obtain discovery of a corporate president, the decision below subverts this Court's commitment to *equal* justice for all participants in our legal system. Accordingly, this Court should grant the writ to resolve the conflicts, to clarify the standards under which discovery may be resisted, and to ensure that those standards are applied equally.

I. The Decision Below Conflicts with the Decisions of Other Circuits by Placing on an Individual Seeking Discovery from a Corporate President the Burden of Demonstrating Why the Discovery Would Be Relevant, Not Burdensome, and Not Readily Obtainable Elsewhere

The court below conceded that Lockheed's president might have information to support Mr. Sharma's Title VII claims concerning the purchase of his house in Houston. App. 7a. Moreover, the court acknowledged that the deponent who had been designated by Lockheed to provide information concerning the relocation policy could *not* provide the information that Mr. Sharma sought. App. 7a. Nevertheless, the court concluded that the protective order prohibiting the deposition of Lockheed's president was justified because Mr. Sharma did

not demonstrate "that any information regarding discrimination against [him] was not already and more easily available than through the deposition of [Lockheed's] president." App. 7a-8a. For the same reason, the court below assumed that taking the deposition of Lockheed's president would be burdensome, even though "the question of burdensomeness was not well-developed in the record or even argued by defense counsel." App. 8a. This decision below conflicts with the rule established by courts in other circuits that the party resisting discovery has a heavy burden to demonstrate good cause for a protective order completely precluding discovery.

In *Blankenship* v. *Hearst Corp.*, 519 F.2d 418 (9th Cir. 1975), the Ninth Circuit explained the rule clearly placing the burden on the party resisting discovery. In *Blankenship*, an antitrust action by a newspaper distributor against the newspaper's publishing company and circulation director, the district court had issued a protective order prohibiting the plaintiff from deposing the individual publisher of the newspaper. *Id.* at 429. The Ninth Circuit held that "[u]nder the liberal discovery principles of the Federal Rules defendants were required to carry a heavy burden of showing why discovery [should be] denied." *Id.* Consequently, the court found that the defendants had failed to meet their burden by simply contending that the deposition would be repetitious of information that the plaintiff had already discovered. *Id.*

Numerous district courts in other circuits have also ruled that the party seeking a protective order has a "heavy burden" to demonstrate good cause for denying discovery. *See, e.g., Medlin* v. *Andrew*, 113 F.R.D. 650, 652-53 (M.D.N.C. 1987) (citing cases demonstrating that most requests that a deposition not be taken are denied); *CBS, Inc.* v. *Ahern*, 102 F.R.D. 820, 822 (S.D.N.Y. 1984); *Lehnert* v. *Ferris Faculty Ass'n*—

MEA-NEA, 556 F. Supp. 316, 318 (W.D. Mich. 1983). For example, in *Grinnell Corp.* v. *Hackett*, 70 F.R.D. 326, 333-34 (D.R.I. 1976), the court held that a party seeking a protective order to prohibit the taking of a deposition on the grounds of harassment must demonstrate lack of relevance in addition to the likelihood of harassment being more probable than not. Similarly, in *Lehnert*, the court explained that "good cause is not established merely by showing that discovery may involve inconvenience and expense." 536 F. Supp. at 318.

Moreover, the stated rule has been applied by other courts even when the deponent is the president of a corporation. In *CBS, Inc.*, the plaintiff requested a protective order when the defendant sought to resume the deposition of plaintiff's president. 102 F.R.D. at 821-22. Noting that it was apparent that the president had relevant information, the court emphasized that "the fact that the witness has a busy schedule is simply not a basis for foreclosing otherwise proper discovery." *Id.* at 822. Furthermore, the court found that plaintiff's contentions that the president had little first-hand knowledge and that other corporate employees were more knowledgeable were insufficient to carry its "heavy burden to demonstrate good cause for a protective order." *Id.* This ruling is flatly inconsistent with the decision below.

In light of these consistent rulings from other courts, a leading commentator has explained that "[a]ll motions for protective orders must be supported by 'good cause' and a strong showing is required before a party will be denied entirely the right to take a deposition." 4 J. Moore, J. Lucas & G. Grotheer, *Moore's Federal Practice*, ¶ 26.69, at 26-434 to 26-435 (2d ed. 1987). Accordingly, as the Fifth Circuit stated in *Salter* v. *Upjohn Co.*, 593 F.2d 649, 651 (5th Cir. 1979), "[i]t is very unusual for a court to prohibit the taking of a deposition altogether and absent extraordinary circumstances, such an order would likely be in error."

In contrast to the rule established by the courts described above, the court below upheld the district court's protective order even though Lockheed did not come close to satisfying "a heavy burden to demonstrate good cause" for prohibiting the deposition of its president. Indeed, the court below conceded that Lockheed's president might have information to support Mr. Sharma's claim that Lockheed had purchased the houses of other employees and acknowledged that Lockheed had not even argued that the deposition would be burdensome. Nevertheless, the court upheld the protective order on the ground that Mr. Sharma did not show that the information he sought to obtain from Lockheed's president was not already or more easily available from other sources.[2] Such a ruling not only contradicts the record,[3] but it directly conflicts with the standard applied by other circuits before denial

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[2] The district court, which also placed the burden on Mr. Sharma, issued the protective order after finding that Mr. Sharma had not shown the relevance of the information he expected to obtain from Lockheed's president. The unfairness of requiring the party seeking discovery to know in advance the information that a deponent possesses was explained by the Seventh Circuit in *Deitchman* v. *E. R. Squibb & Sons, Inc.*, 740 F.2d 556, 563 (7th Cir. 1984):

> when discovery has not been tried, no one can say for sure whether it is going to be futile or not. The expectation that it will be futile is, therefore, not the certainty that justifies cutting off a party's discovery rights without any effort to satisfy them in the most essential particulars.

[3] It is clear from the record that Mr. Sharma attempted to obtain information from employees at Lockheed's Maryland facility, but they did not have any information concerning the purchase of houses of transferred employees. Moreover, when Mr. Sharma sought additional time to pursue further discovery, it was denied by the district court. Under such circumstances, the court below, having conceded that Lockheed's president might have relevant information, certainly erred in concluding that a protective order was justified because the information may have been obtainable from other sources. *See Salter*, 593 F.2d at 651 (suggesting that protective order precluding deposition of company's president would have been in error if deponents designated by company did not provide satisfactory answers).

of discovery is permitted. This Court should grant certiorari to resolve the conflict on this important, recurring issue.

II. The Decision Below Conflicts with This Court's Policy and Decisions in Other Circuits Favoring Broad Discovery

Federal Rule of Civil Procedure 26(b)(1) permits a party to seek discovery of any relevant matter and information "reasonably calculated to lead to the discovery of admissible evidence." This Court has long recognized that the discovery rules—in particular the rules permitting the taking of depositions—"are to be accorded a broad and liberal treatment." *Herbert* v. *Lando*, 441 U.S. 153, 177 (1979); *Schlagenhauf* v. *Holder*, 379 U.S. 104, 115-16 (1964); *Hickman* v. *Taylor*, 329 U.S. 495, 507 (1947). The Court has explained that "[t]o the extent that [it] eventually produces relevant evidence which is useful in determining the merits of the claims asserted by the parties," the process of extensive deposition and document discovery "bears the imprimatur of [the discovery] Rules and of the many cases liberally interpreting them." *Blue Chip Stamps* v. *Manor Drug Stores*, 421 U.S. 723, 741 (1975). The Court cautioned against abuse of liberal discovery *only* in circumstances in which the discovery is sought for reasons other "than a reasonably founded hope that the process will reveal relevant evidence." *Id.*

Other courts, including the Fourth Circuit itself, have recognized that particularly in discrimination actions the liberal spirit of the discovery rules should pervade any discovery disputes. *See Ardrey* v. *United Parcel Serv.*, 798 F.2d 679, 682 (4th Cir. 1986), *cert. denied*, 480 U.S. 934 (1987); *Duke* v. *University of Tex. at El Paso*, 729 F.2d 994, 997 (5th Cir.), *cert. denied*, 469 U.S. 982 (1984); *Trevino* v. *Celanese Corp.*, 701 F.2d 397, 405-06 (5th Cir. 1983). Specifically, a trial court should avoid

restricting discovery in such actions that would preclude a plaintiff from "pursuing a theory or an entire cause of action." *Ardrey*, 798 F.2d at 682.

The Fifth Circuit explained the role of broad, liberal discovery in *Duke*, a case in which a biology professor alleged sexual discrimination with respect to promotion, compensation and assignment. After consolidation with a similar suit by a math professor, the plaintiff filed interrogatories concerning every department in the university with male and female faculty members. The district court issued a protective order limiting the interrogatories to only the biology and math departments. The Fifth Circuit found the restrictions narrowing the scope of discovery to be improper because they did not "adhere to the liberal spirit" of the discovery rules. 729 F.2d at 997. The court emphasized that especially in Title VII cases procedural technicalities should not be allowed to interfere with the vindication of guaranteed rights. *Id.*; *see Trevino*, 701 F.2d at 405 ("unnecessary limitations on discovery is especially frowned upon in Title VII cases").

In *Diaz* v. *AT&T*, 752 F.2d 1356 (9th Cir. 1985), the Ninth Circuit addressed the improper denial of discovery in a Title VII case procedurally similar to the instant case. In *Diaz*, the district court denied plaintiff the opportunity to discover statistical evidence to prove his claim of discrimination. The district court denied the discovery and entered summary judgment in favor of the defendant. The Ninth Circuit noted that "ordinarily, summary judgment orders are not entered until after the non-moving party has had an opportunity to obtain through discovery whatever evidence is necessary or relevant (at least for purposes of summary judgment) * * *." *Id.* at 1362. In reversing the district court, the Ninth Circuit concluded that "summary judgment is *patently inappropriate* when a plaintiff needs statistical data to substantiate the inference of discrimination and

has been denied the opportunity to discover this data." *Id.* at 1362-63 (emphasis supplied).

Depriving Mr. Sharma of the opportunity to seek relevant information from Mr. Young collides with the cited decisions as well as with this Court's commitment to broad, liberal discovery. Moreover, as indicated by the Ninth Circuit's decision in *Diaz*, after narrowing the scope of discovery available to Mr. Sharma, it was "patently inappropriate" for the court below to affirm summary judgment against Mr. Sharma for failing to produce evidence that his attempted discovery might have adduced. The Court should grant certiorari to preserve this Court's broad discovery rule and to resolve the conflict in the application of that rule.

III. The Decision Below Offends Fundamental Principles of Fairness and Equal Justice by Creating a Special Standard Protecting Corporate Presidents from Legitimate Discovery Requests

The court below acknowledged that the deposition of Lockheed's president may have produced relevant evidence and that the record contained no evidence of burdensomeness. Still, the court found the denial of discovery to be justified because Mr. Sharma had not shown that such information was not available from other sources, even though the two employees of Lockheed whom Mr. Sharma did depose testified they did not have knowledge of the information sought. The effect of the decision below is to create a more stringent standard for an individual who seeks to obtain discovery from a corporate president and a more relaxed standard for a corporate president resisting that discovery.

Furthermore, implicit in the decision below is the assumption that a corporate president is too important and too busy to have to deal with discovery requests by individuals seeking to vindicate their rights against discrimination. At the very least, the decision adopts a different

standard for discovery when a "mere" individual employee seeks information from a corporate president. The court below assumed that it was so unlikely that the respondent's president had relevant information that petitioner had to exhaust all other sources of information before being entitled to obtain discovery from the president.[4] Moreover, the court assumed that until petitioner had exhausted all other sources of information, deposing respondent's president would have been inherently burdensome.

If the company can demonstrate *good cause—e.g.*, that its president plainly could provide nothing leading to relevant information or will be unduly burdened by the discovery, it should, *like all other parties*, be entitled to a protective order. However, in the absence of such a showing the corporation should not be entitled to insulate its president with a rule that shifts the burden to the individual to show why he or she is entitled to discovery. There is no room in our system of justice for a rule that affords special treatment for the president of a corporation. *See, e.g., Pennzoil Co.* v. *Texaco Inc.*, 481 U.S. 1, 27 (1987) (Marshall, J. concurring) ("The principles which * * * govern[] with $10,000 at stake should also govern when thousands have become billions. That is the essence of equal justice under law."); *United States* v. *Nixon*, 418 U.S. 683, 709-13 (1974) (even the President of the United States cannot rely on generalized interest in confidentiality to challenge production of subpoenaed materials).

The discovery rules entitle all parties to obtain a broad range of information to enable them to litigate their

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[4] As we have shown, Mr. Sharma did make efforts to obtain necessary information from potential sources other than Mr. Young. However, those other potential sources whom Mr. Sharma did depose did not have the necessary information, and the district court precluded Mr. Sharma from deposing other potential sources by denying his motion for an extension of time to conduct further discovery.

claims fully and fairly. By making it more difficult for an individual to obtain discovery from the president of a corporation, the court below has created a special, unjustified standard that will thwart the ability of individuals to pursue fully and fairly their claims against a defendant corporation. The Court should grant certiorari to consider the lawfulness of a standard which so threatens our system's commitment to equal justice.

CONCLUSION

For the foregoing reasons, this Court should grant the writ and reverse the decision below.

Respectfully submitted,

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APPENDICES

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 87-3134(L)

PRAMOD K. SHARMA,
Plaintiff-Appellant

versus

LOCKHEED ENGINEERING & MANAGEMENT SERVICES COMPANY, INC.,
Defendant-Appellee

No. 88-3055

PRAMOD K. SHARMA,
Plaintiff-Appellant

versus

LOCKHEED ENGINEERING & MANAGEMENT SERVICES COMPANY, INC.,
Defendant-Appellee

Appeals from the United States District Court
for the District of Maryland, at Baltimore,
Frederic N. Smalkin, District Judge

(CA-86-2491)

Argued: October 4, 1988 Decided: November 7, 1988

Before POWELL, Associate Justice (Retired), WINTER, Chief Judge, and MURNAGHAN, Circuit Judge.

Stephen Howard Ring for Appellant. James Patrick Gillece, Jr. (Richard Hafets, Emmett F. McGee, Jr., PIPER & MARBURY on brief) for Appellee.

WINTER, Chief Judge:

The district court entered summary judgment for defendant, Lockheed Engineering & Management Services Co. (Lockheed), in a suit brought by Pramod K. Sharma for alleged discrimination in employment in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.* and 42 U.S.C. § 1981, and for state law causes of action for breach of contract and intentional infliction of emotional distress.[1]

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[1] Sharma's complaint alleged four causes of action. The first alleged a violation of Title VII arising from retaliatory discharge, involuntary job transfer from Texas to Maryland, involuntary transfer between departments in Maryland and various other acts of discrimination by supervisory personnel. The second cause of action, predicated on 42 U.S.C. § 1981, realleged the facts set forth in the first cause of action and asserted that Lockheed's actions were undertaken willfully, maliciously and with the intent to oppress him so as to warrant the award of punitive damages.

Sharma's third cause of action, also styled as a claim under 42 U.S.C. § 1981, alleged a discriminatory breach of contract. It was treated by the district court as alleging both a federal discrimination claim and a state contract claim. The fourth cause of action, again referring to 42 U.S.C. § 1981, merely alleged the tort of intentional infliction of emotional distress. The district court correctly deemed it to allege only a state law tort claim.

Sharma appeals, contending that the district court committed reversible error in denying him the right to take the deposition of the president of Lockheed, Robert Young, and in ruling that his state claim for breach of contract was barred by the applicable statute of limitations and the statute of frauds.[2] We think that Lockheed was entitled to judgment on Sharma's breach of contract claim, albeit for reasons in addition to those assigned by the district court, and that entry of the order prohibiting the taking of the deposition was not an abuse of the district court's discretion. We therefore affirm the judgment for Lockheed.

I.

Sharma, an engineer of Indian origin, was employed by Lockheed in 1981 as a computer programmer to work at Lockheed's Houston, Texas facility. Because of the nearing completion of its government contract and the consequent need to reduce the number of its employees, Lockheed advised him in the fall of 1982 that he would be laid off. He was, however, offered a position in Lockheed's Greenbelt, Maryland facility.

Prior to learning that he would be laid off or transferred, Sharma had had built a house in Houston to his specifications which he occupied as his home. He discussed his concern about the house with his supervisor George Brown who, according to Sharma, said that Lockheed would help him sell the house and if he was unable to sell it, Lockheed would purchase it from him. Based on this representation, Sharma accepted the transfer and listed his home for sale. Despite reductions in the asking price, the house did not sell, and periodically Sharma spoke to Brown who reaffirmed what Lockheed was willing to do.

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[2] Before us, Shrama does not question the correctness of the district court's judgment against him on his claim for intentional infliction of emotional distress.

In January 1983 Brown furnished Sharma with a copy of Lockheed's written relocation policy, and he was told that the policy would govern his transfer. Sharma was also given a "Relocation Order" which set forth the relocation expenses that Lockheed would pay in connection with the move to Maryland. Neither the written policy nor the order made any mention of a possible purchase of Sharma's house.

Sharma moved to Maryland some time before March 1983, and after his move he asked Brown if Lockheed would purchase his house. Sharma says that Brown said that he "would look into the matter", but Brown never made any other response. Sharma asked Lockheed in April 1983 to honor the promise to buy his house, but his demand was refused. In June 1983, Lockheed gave Sharma an accounting, itemizing its obligations with regard to the move: the accounting made no mention of a purchase of Sharma's house.

Sharma filed suit August 8, 1986.

During the course of discovery, Sharma sought to discover evidence that Lockheed, on prior occasions, had agreed to purchase houses of other employees transferring from Texas as a foundation for his claim that the promise to him was discriminatorily repudiated because he was Indian. Accordingly, Sharma requested voluminous personnel records concerning Lockheed employees and gave notice to Lockheed under F. R. Civ. P. 30(b)(6), that he desired to take the deposition of a corporate officer, employee or agent who had knowledge, *inter alia*, of Sharma's employment history with Lockheed and of any promises made to Sharma in connection with his 1982 move from Texas to Maryland. In response, Lockheed designated and produced Adrienne Allen, personnel manager at Lockheed's Maryland facility, who, when questioned, stated that she was not familiar with personnel procedures in Houston and that she did not know

if Lockheed had ever paid for an employee's house when he was transferred from one facility to another. She also stated that she was unaware of any agreements outside of Lockheed's written policy regarding Sharma's relocation.[3]

Because he could not get the sought-after evidence from Ms. Allen, Sharma then sought to take the deposition of Robert B. Young, Jr., president of Lockheed. Lockheed resisted the taking of the deposition, and it sought a protective order based upon Young's affidavit that he had never met Sharma, that he had no personal knowledge regarding Sharma's employment, and that he knew nothing about the allegations in Sharma's complaint. After a hearing at which Sharma's counsel was given the opportunity to proffer what relevant evidence he expected to obtain from Young, the district court granted the protective order.[4] It ruled that there had been no demonstration that Young had any relevant personal knowledge and that the deposition was unduly burdensome and unwarranted.[5]

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[3] By the time of Sharma's suit, Brown was no longer an employee of Lockheed. However, Brown's last address as known to Lockheed was furnished to Sharma in response to his document request. Although Brown was the obvious person from whom to seek corroboration of the promises and perhaps information regarding other transferred employees, there is nothing to suggest that Sharma sought this testimony.

[4] As his proffer, Sharma's counsel suggested that Young's deposition was necessary because "no one" at the Maryland facility was able to answer his questions about relocation costs and that he believed other Lockheed employees' homes had been purchased.

[5] However, the district court did order Lockheed to make Mr. Barry Forster available for deposition. Forster was the manager of one of the departments in the Maryland facility where Sharma had worked, and had been identified as one of the people Sharma wished to depose. Forster's deposition was subsequently taken and apparently proved unhelpful in supporting any of Sharma's claims.

On the merits, the district court gave summary judgment to Lockheed. It ruled that Sharma had failed to produce any evidence that Lockheed's action were discriminatorily motivated or that similarly situated nonminority employees were treated preferentially. With regard to the alleged causes of action for breach of contract and intentional infliction of emotional distress, the district court ruled that it had jurisdiction because of diversity of citizenship,[6] but that the former was barred by limitations and the statute of frauds and the latter was lacking in evidentiary support. Finally, the district court awarded Lockheed counsel fees of $20,000 upon finding that Sharma's claims were "frivolous, unreasonable and groundless." Sharma does not attack the amount of this award, aside from his contention that Lockheed should not have prevailed on the merits.

II.

We consider first the protective order preventing Sharma from deposing Young.[7]

Our decisions have made clear that discovery rulings "will not be overturned absent a showing of clear abuse of discretion." Ardrey v. United Postal Service, 798 F.2d 679, 682 (4 Cir. 1986). However, in discrimination cases a particularly wide degree of latitude should be afforded plainitffs with respect to the relevance of the requested discovery, and the district court should not "prevent a plaintiff from pursuing a theory or entire cause of action." *Ardrey*, 798 F.2d at 682; *see also* Diaz v. Amer-

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[6] Sharma had not alleged diversity jurisdiction, but it is not disputed that the parties are citizens of different states and the requisite amount in controversy is claimed.

[7] Sharma does not make any contention that the district court's disposition of his alleged Title VII and § 1981 causes of action should be disturbed except for its refusal to permit him to take Young's deposition.

ican Tel. & Tel., 752 F.2d 1356, 1363 (9 Cir. 1985) *and* Duke v. University of Texas at El Paso, 729 F.2d 994, 997 (5 Cir.) *cert. denied*, 469 U.S. 962 (1984).

The first basis for granting this protective order—lack of relevance of the desired discovery—is supported by the record and in keeping with our previous decisions and those of other circuits. By affidavit, the proposed deponent Robert Young stated that he does not personally know Sharma and has no personal knowledge regarding the allegations of Sharma's complaint. While such a statement by itself will not always be sufficient to justify a protective order, it does establish that, in this case, Young's deposition would not have adduced evidence to establish the discriminatory intent necessary for a valid § 1981 claim. At most, evidence might have been adduced that could have only indirectly supported Sharma's Title VII claim by establishing that, at least under some circumstances, Lockheed does pay real estate fees or purchase employees' homes as part of its relocation program.

The question then is whether this information was duplicative or more easily obtainable from other sources. At the time the protective order was entered, Lockheed had produced numerous personnel records requested by Sharma, and had made available for deposition Ms. Allen, the personnel manager of Lockheed's Maryland facility. Sharma's counsel had not yet undertaken a review of the more than 4500 documents despite their availability for more than one month, nor had he undertaken the depositions of individuals directly involved with Sharma and implicated in the case. Although Sharma was understandably disappointed by the testimony of Ms. Allen, there was nothing to support Sharma's claim of discrimination or his allegation regarding the relocation expense promises.

Under the circumstances, the protective order was justified. There is simply nothing to suggest that any

information regarding discrimination against Sharma was not already and more easily available than through the deposition of Lockheed's president. Given the absence of specific knowledge by Young and the access to other sources of discovery, the district court's protective order on the basis of relevance was far from an abuse of discretion. Sharma could have brought a motion to dissolve the protective order if exploration of these other sources of information enabled him to articulate more specifically the relevant information to be gained from Young.

Although the question of burdensomeness was not well-developed in the record or even argued by defense counsel, the district court's finding is supported by Young's affidavit and the employment policies at issue relative to Young's role in the company. In other words, the district court's conclusion that the requested discovery was burdensome was not an abuse of discretion in light of the apparent absence of useful information to be obtained. We do not hold that the deposition of a corporate president is inherently burdensome, even where lack of knowledge is claimed, if relevant information is likely to be obtained and is not readily available elsewhere. *See* Mulvey v. Chrysler Corp., 106 F.R.D. 364, 366 (D.R.I. 1985) *and* Amherst Leasing Corp. v. Emhart Corp., 65 F.R.D. 121, 122-123 (D. Conn. 1974). But this is not that case.

Finally, the protective order was also within the bounds of the district court's discretion with respect to Sharma's claim for breach of contract. Even if we assume that the oral promise to pay various relocation expenses was actually made, Young's affidavit establishes that he knows nothing about that particular promise or its breach. Furthermore, there is nothing in the record to suggest that Sharma ever attempted to depose George Brown, the actual promisor, or the person Brown allegedly charged with the task of making good on that

promise. Thus, Sharma's ability to recover under this theory or to avoid summary judgment on his contract claim was not clearly or materially affected by the protective order.

III.

We consider next Sharma's alleged cause of action for breach of contract. The district court ruled, first, that it was barred by limitations. It reasoned that Maryland's three-year statute of limitations applied, Md. Cts. & Jud. Proc. Code Ann. § 5-101, and that Sharma's cause of action for breach of contract accrued no later than June 9, 1983 when he received the accounting from Lockheed setting forth in writing that his claim for Lockheed's purchase of his house was not being honored. Despite his knowledge, Sharma did not institute suit until August 6, 1986. It also ruled that his claim was barred by the statute of frauds. The alleged promise was not reduced to writing and the doctrine of part performance was not applicable because Sharma's move to Maryland did not " 'relate to and be unequivocal evidence of the particular contract [alleged in the complaint]' " as required by Maryland law. Citing 2 J. Alexander, British Statutes in Force in Maryland (Coe's 2d ed. 1912) at 696 n.3. *See also Beall v. Beall*, 291 Md. 244, 434 A.2d 1015, 1019 (1981).[8]

We do not disagree with the reasons assigned by the district court except to note that part of the oral contract alleged by Sharma may not be within the statute of frauds; i.e., the part ancillary to the actual purchace of the house—payment of attorney's fees, real estate commissions, etc. But we think that there is an even more compelling reason why Sharma cannot prevail on his breach of contract claim. It is that the evidence of a

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[8] Before us Sharma does not argue that Texas, and not Maryland law, is applicable or, if applicable, that Texas law differs from Maryland law in this regard.

contract between the parties is so vague and nebulous that it is imposisble to tell what the contract was in order to determine if it had been breached.

If, in fact, Lockheed promised to aid or assist Sharma in disposing of his house, it is impossible to know what aid or assistance was promised. If Lockheed promised to purchase Sharma's house in the event he was unsuccessful in selling it himself, the evidence is lacking as to when the condition of the promise would be fulfilled (how exhaustive Sharma's efforts to sell it himself were required) so as to make the promise effective, and, if the promise became effective, at what price and on what other terms and conditions Lockheed would make the purchase. If Lockheed, either in connection with its purchase of the house or the sale of the house by Sharma to some third person, agreed to pay associated expenses, there was no evidence proffered to show the exact expenses to be paid or the range of amounts to be paid, actual or limited.

The burden was on Sharma to set forth these facts with sufficient specificity to establish there was a genuine issue for trial. Rivanna Trawlers Unlimited v. Thompson Trawlers, 840 F.2d 236, 239 (4 Cir. 1988). We can only conclude that plaintiff has failed to carry this burden because even if a promise was made, its terms are so indefinite and unclear as to preclude an award of damages for their breach.

AFFIRMED.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Civil No. S 86-2491

PRAMOD K. SHARMA

v.

LOCKHEED ENGINEERING AND MANAGEMENT SERVICES COMPANY, INC.

MEMORANDUM

This is a suit filed pursuant to 42 U.S.C. §§ 1981 and 2000e-5, in which the plaintiff asserts four claims arising from his former employment with the defendant. The defendant has moved for summary judgment, and the plaintiff has responded, each submitting appropriate supporting material under Fed. R. Civ. P. 56(e). No oral hearing is necessary. Local Rule 6, D. Md. The defendant's motion will be granted, by separate order, for reasons now to be stated.

The plaintiff raises three major claims in support of his discrimination complaints under Title VII and § 1981. These are claims of disparate treatment. The first major claim grows out of plaintiff's allegation that, at some time before his voluntary transfer from Texas to Greenbelt, Maryland between November, 1982 and January, 1983, the defendant agreed to purchase plaintiff's Texas home (the agreement allegedly having been made over the telephone by one George Brown, a manager at de-

fendant's Greenbelt facility whom plaintiff had met in Houston). Plaintiff claims that defendant's subsequent failure to purchase his Texas home was an act of discrimination on the basis of plaintiff's race and/or national origin. Plaintiff also complains that his transfer from Department 7140 to Department 7150 at the defendant's Greenbelt facility was discriminatory, and was made in retaliation for his complaints about not having previously gotten a raise and about the defendant's failure to purchase the Texas home. Plaintiff finally complains that his discipline, eventuating in termination, for allegedly poor job performance at Greenbelt was discriminatory on the bases as aforesaid and was in retaliation for his earlier complaints, recited above, about the conditions of his employment.[1] Plaintiff's complaint in this suit, in addition to asserting the Title VII and § 1981 claims described above, asserts a claim for breach of contract arising from the defendant's failure to purchase his Texas home and its intentional infliction of emotional distress upon plaintiff, arising from the defendant's aforementioned conduct towards plaintiff during the course of his employment. These latter two claims are plead as § 1981 claims, which they are not. However, this Court has jurisdiction over them because of the parties' diverse citizenship. 28 U.S.C. § 1332.

The defendant has moved for summary judgment, thereby making it the plaintiff's obligation to come forward with sufficient evidence to show that there is a genuine issue of material disputed fact for trial. *Celotex Corporation v. Catrett*, 106 S.Ct. 2526 (1986). In determining whether any factual dispute is material, the Court must look to the plaintiff's proof burden under applicable substantive law. *Anderson v. Liberty Lobby, Inc.*, 106 S. Ct. 2505 (1986).

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[1] Plaintiff has also asserted a minor claim arising from his failure to receive a raise in Texas in 1982.

It is perfectly plain that summary judgment may be granted on a discrimination-based claim where the plaintiff is unable to adduce evidence, rising above his own unsupported allegations of discriminatory motive, that the challenged employer actions were improperly motivated by discrimination, and thus violative of Title VII or § 1981. *Ross v. Communications Satellite Corp.*, 759 F.2d 355, 364-65 (4th Cir. 1985). Such evidence could take the form of a showing that similarly situated non-minority persons were treated differently (more favorably), or that there was a discriminatory motive behind the actions taken against the plaintiff (remembering that mere suspicion or unsupported allegations of prejudice are not sufficient for this purpose). *Id. See also Texas Dept. of Community Affairs v. Burdine*, 450 U.S. 248 (1981).

The defendant has absolutely and utterly denied any prohibited discriminatory motive in connection with the actions complained of by the plaintiff. Thus, the plaintiff must bring forth evidence raising a material dispute of fact. *Celotex Corporation v. Catrett.* With regard to the house purchase matter, the plaintiff, in support of his allegation of racial discrimination, states only as follows: "That I have reasons to believe that Lockheed Corporation has either purchased other employees' houses, and [sic] paid real estate commissions, who were similarly situated to me, namely, to wit: George Austin, Ajit Kuatra, and another person that I am not able to identify at the present time." (Affidavit at ¶ 7). This assertion is plainly insufficient to generate a triable issue on the housing purchase claim, for two reasons, one technical and the other substantive. Technically, the affidavit is insufficient in this particular because it does not assert the personal knowledge of the plaintiff as a witness to testimonial facts, but merely states that he "has reason to believe" certain facts. Rule 56 plainly requires that affidavits in support of or in opposition

to summary judgment, except as to matters of opinion rather than of fact, must be made "on personal knowledge." A conclusory statement that the affiant has reason to believe a certain fact does not satisfy the Rule's requirement. *See* cases collected at 10A C. Wright, A. Miller, and M. Kane, *Federal Practice and Procedure*: Civil 2d § 2738 (1983) at 489 n.38. Thus, the plaintiff's affidavit statement is technically insufficient under Rule 56(e). Substantively, it is also insufficient, because it fails to identify the persons allegedly more favorably treated as being non-minority persons.[2]

With regard to plaintiff's claims that his transfer to Unit 7150 and his subsequent discipline and discharge were retaliatory measures taken in conjunction with his complaints about failure to receive a raise and about the house purchase, there is utterly no proof adduced by plaintiff that shows any retaliation on grounds prohibited by either Title VII or § 1981. Thus, he cannot avoid summary judgment on his retaliation claims.

Finally with relation to the § 1981 and Title VII claims, the plaintiff has advanced utterly no evidence tending to show that similarly situated non-minority persons were treated more favorably than he with regard either to transfer, discipline, or discharge. In order to make out a *prima facie* case in this area, the plaintiff must show that similarly situated non-minority persons received more favorable treatment than he. *Moore v. City of Charlotte*, 754 F.2d 1100, 1109 (4th Cir.), *cert. denied*, 105 S. Ct. 3489 (1985). This, the plaintiff has completely failed to do. His apparent attempt to do so, in his summary judgment opposition at 16-19, is utterly incapable of being understood. It talks of ranks and de-

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[2] The Court notes that the plaintiff has advanced utterly no evidence of discriminatory practice in conjunction with defendant's alleged failure to give him a raise in Texas prior to his transfer to Greenbelt.

grees, but makes no mention of any *relevant* fact. What plaintiff has done is merely to document a dispute between him and his former employer over the quality of his work. Without the necessary showing of discriminatory animus under Title VII or § 1981,[3] the plaintiff has no case. For the reasons stated, then, the plaintiff's case cannot survive the defendant's summary judgment motion on his first two causes of action.

The plaintiff's third cause of action is a contract claim arising out of the defendant's alleged failure to purchase the Texas home. The claim is clearly barred by the applicable statute of limitations, *viz., Md. Cts. & Jud. Proc. Code Ann.* § 5-101 (1984). Plaintiff's cause of action most likely accrued in April, 1983, or, extending the utmost benefit of the doubt to plaintiff, as of June 9, 1983, this being the last conceivable date of any breach of the contract by defendant in the way of failure to perform. *See, e.g., Henry's Drive-In, Inc. v. Pappas*, 264 Md. 422, 428, 287 A.2d 35, 38 (1972). This suit was not filed until August 8, 1986, which is beyond the three year limitations period under Maryland law, under any view of when this claim accrued. Plaintiff's claim for additional relocation expenses is similarly time-barred.

Plaintiff's attempt to enforce the alleged oral contract for the purchase of his Texas house is barred by the statute of frauds, both as recognized in Maryland, *Md. Real Prop. Code Ann.* § 5-104 (1981), and in Texas, *Texas Business & Comm. Code Ann.* § 26.01 (Vernon 1968). It is undisputed that there is absolutely no written memorandum of the alleged agreement signed by or on behalf of the defendant. Plaintiff's allegations of part

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[3] Although most of the case law authority in this area is generated under Title VII, § 1981's requirement of proof of discriminatory intent clearly makes that authority applicable to the analysis of plaintiff's § 1981 claims in the summary judgment context of this suit. *See Firefighters Local Union No. 1784 v. Stotts*, 467 U.S. 561, 583 n.15 (1984).

performance are without merit. The contract for sale of the house was not partially performed, within the meaning of the statute of frauds, by his acceptance of a transfer to Greenbelt. The transfer and the house sale contract might have arisen in the context of a single transaction, but the evidence of part-performance must be of an act that, of itself, gives evidence of the *identity* of the particular contract sought to be enforced, *viz.*, an oral contract for the sale of an interest in land. "It is not enough that there is evidence of some contract. It must relate to and be unequivocal evidence of the particular contract challenged in the bill." 2 J. Alexander, *British Statutes in Force in Maryland* (Coe's 2 ed. 1912), at 696 n.3, citing both Maryland and English cases.

Finally, plaintiff's fourth cause of action, *viz.*, intentional infliction of emotional distress, is clearly unfounded as a matter of law on these facts. Indeed, the plaintiff has not even specifically argued against summary judgment on this cause of action in his opposition to defendant's motion. It is obvious that the plaintiff cannot make out the extremely outrageous conduct required to sustain this cause of action under Maryland law, given the facts in this case, taken in the light most favorable to the plaintiff. *Vance v. Vance*, 286 Md. 490, 408 A.2d 728 (1979); *Harris v. Jones*, 281 Md. 560, 380 A.2d 611 (1977); *Silkworth v. Ryder Truck Rental, Inc.*, 70 Md. App. 264, 520 A.2d 1124 (1987); *Hamilton v. Ford Motor Credit Co.*, 66 Md. App. 46, 502 A.2d 1057, *cert. denied*, 306 Md. 118, 507 A.2d 631 (1986).

Even if the plaintiff was not fairly treated, and thus improperly disciplined and discharged, these actions are not so outrageous as to be conduct that constitutes "a complete denial of plaintiff's dignity as a person," *Dick v. Mercantile-Safe Deposit and Trust Co.*, 63 Md. App. 270, 276, 492 A.2d 674, 677 (1985), or that "strike[s] at the very core of one's being, tending to shatter the frame upon which one's emotional fabric is hung."

Hamilton v. Ford Motor Credit Co., 66 Md. App. at 59-60, 502 A.2d at 1064. It has been specifically recognized that intentional infliction claims do not arise from routine disciplinary or termination decisions in the employment relationship, even if there is an utter disregard for the plaintiff shown in the process, because such conduct does not "amount to the 'major outrage' of personal dignity that is 'essential to the tort.'" *Leese v. Baltimore County*, 64 Md. App. 442, 471, 497 A.2d 159, 174, *cert. denied*, 305 Md. 106, 501 A.2d 845 (1985). *See also* the interesting case of *Continental Casualty Co. v. Mirabile*, 52 Md. App. 387, 449 A.2d 1176, *cert. denied*, 294 Md. 652 (1982), in which no intentional infliction claim was found, despite claims of constant harassment by a supervisor, including moving the plaintiff's desk, laughing at him, sending him on meaningless errands, failing to deliver his mail, calling him a hyena and a jackass in the presence of co-workers, screaming and yelling at him, and tapping him on the nose. It is thus clear that plaintiff has no claim under Maryland law for intentional infliction of emotional distress, and defendant is entitled to summary judgment thereon. Fed. R. Civ. P. 56(e); *Anderson v. Liberty Lobby.*

For the reasons stated, an order will be entered separately, granting the defendant's motion for summary judgment and entering judgment in its favor, against the plaintiff, with costs.

/s/ Frederic N. Smalkin
FREDERIC N. SMALKIN
United States District Judge

Dated: July 20, 1987

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 87-3134(L)

PRAMOD K. SHARMA,

Plaintiff-Appellant

versus

LOCKHEED ENGINEERING & MANAGEMENT SERVICES COMPANY, INC.,

Defendant-Appellee

No. 88-3055

PRAMOD K. SHARMA,

Plaintiff-Appellant

versus

LOCKHEED ENGINEERING & MANAGEMENT SERVICES COMPANY, INC.,

Defendant-Appellee

Appeals from the United States District Court
for the District of Maryland, at Baltimore

JUDGMENT

[Filed November 7, 1988]

This cause came on to be heard on the record from the United States District Court for the District of Maryland, at Baltimore and was argued by counsel.

ON CONSIDERATION WHEREFORE, it is now here ordered and adjudged by this Court that the judgment of the said District Court appealed from, in this cause, be, and the same is hereby, Affirmed.

Clerk
/s/ John M. Greacen
JOHN M. GREACEN

Supreme Court, U.S.
FILED
FEB 28 1989
JOSEPH F. SPANIOL, JR.
CLERK

No. 88-1294

IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

PRAMOD K. SHARMA,

Petitioner,

v.

LOCKHEED ENGINEERING AND MANAGEMENT SERVICES COMPANY, INC.,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fourth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

Upon a showing by the Respondent that no relevant evidence was likely to result from the deposition of its president, Robert B. Young, Jr., that the information sought by the Petitioner was already and more easily available, and that the deposition would be unduly burdensome under the circumstances, the district court issued a protective order precluding Young's deposition. The Court of Appeals affirmed this decision, ruling that it was "far from an abuse of discretion." The questions before this Court are:

I. Does this Court have jurisdiction to determine the appropriateness of the protective order when, even were the order found to be inappropriate, the Petitioner's claims would remain barred by the statute of limitations?

II. Even if this Court would have jurisdiction, should the Court grant certiorari to consider a mundane discovery dispute that turns upon the particular facts of this case, involves no new or important legal issues, and applies legal rules that are recognized by all of the circuits?

PARTIES TO THE PROCEEDINGS IN THE COURT OF APPEALS

The parties to the proceedings in the Court of Appeals were the Appellant (now the Petitioner) Pramod K. Sharma and the Appellee (now the Respondent) Lockheed Engineering and Management Services Company, Inc.[1]

[1] Lockheed Engineering and Management Services Company, Inc. is now known as Lockheed Engineering & Sciences Company. It is a wholly owned subsidiary of Lockheed Corporation. A list of all subsidiaries and affiliated companies is attached hereto as Appendix A.

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FED. R. CIV. P. 26(b)(1)	2,9
FED. R. CIV. P. 26(c)	*passim*
FED. R. CIV. P. 30(b)(6)	*passim*

IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

No. 88-1294

PRAMOD K. SHARMA,

Petitioner,

v.

LOCKHEED ENGINEERING AND MANAGEMENT SERVICES COMPANY, INC.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

JURISDICTION

The Court does not have jurisdiction to decide the issue presented in the Petition for a Writ of Certiorari, because the issue is moot, and the Court's decision on the issue presented would have no effect on the outcome of the case. Even if the challenged protective order were inappropriate, the Petitioner's claim still was barred by the statute of limitations, a fact which the Petitioner does not challenge.

PERTINENT FEDERAL RULES AND STATUTES

42 U.S.C. § 1981, in pertinent part, provides:

> All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts . . . as is enjoyed by white citizens. . . .

Federal Rule of Civil Procedure 26(b)(1) provides:

> Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.
>
> The frequency or extent of use of the discovery methods set forth in subdivision (a) shall be limited by the court if it determines that: (i) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (ii) the party seeking discovery

> has had ample opportunity by discovery in the action to obtain the information sought; or (iii) the discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the litigation. The court may act upon its own initiative after reasonable notice or pursuant to a motion under subdivision (c).

Federal Rule of Civil Procedure 26(c) provides:

> Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the court in which the action is pending or alternatively, on matters relating to a deposition, the court in the district where the deposition is to be taken may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (1) that the discovery not be had; (2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place; (3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery; (4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters; (5) that discovery be conducted with no one present except persons designated by the court; (6) that a deposition after being sealed be opened only by order of the court; (7) that a trade secret or other confidential research, develop-

> ment, or commercial information not be disclosed or be disclosed only in a designated way; (8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.

Federal Rule of Civil Procedure 30(b)(6) provides:

> A party may in the party's notice and in a subpoena name as the deponent a public or private corporation or a partnership or association or governmental agency and describe with reasonable particularity the matters on which examination is requested. In that event, the organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. A subpoena shall advise a non-party organization of its duty to make such a designation. The persons so designated shall testify as to matters known or reasonably available to the organization. This subdivision (b)(6) does not preclude taking a deposition by any other procedure authorized in these rules.

STATEMENT OF THE CASE

From January 1981 to October 1985, the Petitioner, Pramod K. Sharma ("Sharma"), was employed by the Respondent, Lockheed Engineering and Management Services Company, Inc. ("Lockheed"), as a relatively low-level computer programmer. Court of Appeals Joint Appendix ("Ct. App. J.A.") 144, 149. On August

8, 1986, Sharma filed suit against Lockheed in the United States District Court for the District of Maryland. Pet. App. 4a.[2] Only one count of the Complaint, the "Third Cause of Action," was at issue in the appeal to the court below, and it is only this count that is addressed in Sharma's present Petition. This Third Cause of Action asserted a racially discriminatory breach of an alleged agreement relating to Sharma's transfer from Houston, Texas to Greenbelt, Maryland in 1982. Ct. App. J.A. 13. Specifically, Sharma claimed that, in connection with his transfer, Lockheed orally agreed to purchase his home in Houston, but breached that agreement. Ct. App. J.A. 44. The count was styled as a breach of contract/§ 1981[3] claim. Ct. App. J.A. 13; Pet. App. 2a.

Lockheed denied that it ever agreed to purchase Sharma's home under any circumstances. Nonetheless, during the course of discovery, Sharma was afforded every reasonable opportunity to obtain facts to support his claim that there was such an agreement, and that Lockheed breached the agreement. The district court extended the discovery deadline no less than five times. Ct. App. J.A. 71-75, 221.1. Despite the extended discovery, Sharma still was not able to produce any facts to support his claim.

Lockheed produced for Sharma over 4,500 documents, including personnel files containing information on other transferred and relocated employees,

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[2] The decisions below of the district court and the United States Court of Appeals for the Fourth Circuit are reprinted in the Appendix of Sharma's Petition for a Writ of Certiorari, referred to herein as "Pet. App."

[3] 42 U.S.C. § 1981 (1982).

but Sharma could not point to any similarly situated nonminority employee whose home Lockheed had purchased. Ct. App. J.A. 56-58. Lockheed also produced its written relocation policies, which contained no suggestion that Lockheed would purchase a relocated employee's home. Ct. App. J.A. 152. Sharma's own relocation papers, which detailed the expenses for which he would be reimbursed and the other arrangements the company would make in connection with his relocation to Greenbelt, made no mention of any agreement to purchase Sharma's Houston home under any circumstances. Ct. App. J.A. 159.

Among the depositions taken in the case was Sharma's deposition of Adrienne Allen. Ms. Allen was deposed pursuant to Rule 30(b)(6), FED. R. CIV. P. Ct. App. J.A. 43. She was Lockheed's Manager of Human Resources and was responsible for personnel matters and the administration of Lockheed's policies, including Lockheed's relocation policy. Ct. App. J.A. 143, 145. Sharma's Petition mischaracterizes Ms. Allen's deposition and suggests that she did not know if Lockheed had purchased the homes of other relocated employees and that she was not familiar with the relevant policies. To the contrary, Ms. Allen was familiar with the relevant company policies and testified that Lockheed had not purchased the home of any employee transferred from one location to another—"I DO NOT KNOW OF ANY AND AS FAR AS I KNOW THERE HAVE BEEN NONE." Ct. App. J.A. 435. Sharma chose not to propound interrogatories in this case, but if he had, Ms. Allen's testimony would have been confirmed. Lockheed has never purchased the home of any similarly situated employee.

After the eventual close of discovery, Lockheed moved for summary judgment on Sharma's entire Complaint. Ct. App. J.A. 84. With regard to the claim concerning the alleged agreement to purchase Sharma's home, the Third Cause of Action, Lockheed moved for summary judgment on several grounds, including the ground that Sharma was not able to produce any facts establishing the racial motivation required under § 1981, and that the claim was barred by the applicable three-year statute of limitations. Ct. App. J.A. 84. The district court agreed and granted Lockheed summary judgment. Pet. App. 11a.

In appealing the district court's decision to the United States Court of Appeals for the Fourth Circuit, Sharma did not dispute the fact that he had failed to produce any evidence of racial motivation. Instead, Sharma argued that the district court's grant of summary judgment should be reversed because, during discovery, the district court issued a protective order which prevented him from deposing Lockheed's president, Robert B. Young, Jr., and, thus, allegedly prevented him from obtaining the necessary evidence of race discrimination with regard to Lockheed's refusal to purchase his Houston home. (Sharma did not argue that Young's deposition would have had any impact on the award of summary judgment on limitations grounds.)

When Sharma had attempted to depose Young, Lockheed objected and moved for a protective order pursuant to Rule 26(c), FED. R. CIV. P. Ct. App. J.A. 527. The district court held a hearing on Lockheed's motion. Ct. App. J.A. 438. Contrary to the recitation of the proceedings in Sharma's Petition, at the hearing the district court imposed on Lockheed

the initial burden of going forward and establishing good cause for a protective order preventing Young's deposition. Ct. App. J.A. 441. In satisfaction of that burden, Lockheed first reviewed for the district court the numerous procedural flaws in Sharma's attempt to depose Young, including the lack of advance notice of the deposition, lack of service, and lack of an effective subpoena. (Sharma attempted to depose Young, an individual, under Rule 30(b)(6), giving only two business days' notice. The deposition was to be taken in Texas, and Sharma attempted to serve on Lockheed's counsel a subpoena for Young, a Texas resident, issued out of the court in Maryland.) Ct. App. J.A. 442, 443-46.

In addition to reciting the procedural defects, Lockheed also informed the district court that it was seeking a protective order because Sharma's attempt to depose Young was for no legitimate purpose, but rather was an effort to harass Lockheed by imposing on its president the burden of appearing for a deposition when he had no relevant information. Ct. App. J.A. 446. In this regard, Lockheed presented the district court with an affidavit signed by Young confirming that he was Lockheed's president; that he had never met Sharma; that he had no personal knowledge regarding Sharma's employment; and, that he knew nothing about the allegations in this case. Ct. App. J.A. 445, 534. Lockheed also emphasized that there were alternative sources who, unlike Young, possessed relevant knowledge. In this regard, Lockheed pointed out that, with respect to the subjects designated in the notice of deposition for Young, and specifically, questions concerning Lockheed's relocation policies, Sharma already was in the middle of a

Rule 30(b)(6) deposition of Lockheed's Human Resource Manager, Adrienne Allen. Ct. App. J.A. 445. As explained to the court, Ms. Allen was ready, willing and able to testify with respect to such matters and had been designated by the company to do so on its behalf. Ct. App. J.A. 445.

After Lockheed set forth the bases for the requested protective order, the district court gave Sharma the opportunity to rebut Lockheed's showing, including the opportunity to make a proffer on the relevance of Young's expected testimony. Ct. App. J.A. 449. From the response of Sharma's counsel, it was clear that no relevant evidence was likely to result from the deposition. The following excerpts from the hearing appear in the record: "MR. WOODARD [SHARMA'S COUNSEL]: WELL, THE RELEVANCE WE WON'T KNOW UNTIL WE ASK THE QUESTIONS." Ct. App. J.A. 461. "THE COURT: WELL, THE QUESTION IS WHETHER THERE IS ANY RELEVANT EVIDENCE TO BE OBTAINED UNDER RULE 26." "MR. WOODARD: WELL, WE DON'T KNOW UNTIL I ASK THE QUESTIONS." Ct. App. J.A. 474.

Finding that Lockheed had established good cause for the protective order which Sharma had not been able to rebut, the district court issued a protective order, pursuant to Rule 26(b)(1) and (c), FED. R. CIV. P., preventing Sharma from deposing Young. Ct. App. J.A. 527. In doing so, the district court specifically found that Sharma had not been able to rebut Lockheed's showing that Young had no information relevant to the matters involved in this suit, and that, under the circumstances, requiring Young to appear

for a deposition would be unduly burdensome. Ct. App. J.A. 472.

On appeal, the appropriateness of the district court's protective order was addressed below by a distinguished panel of the Fourth Circuit, consisting of Retired Associate Supreme Court Justice Powell, Chief Judge Winter, and Judge Murnaghan. The Fourth Circuit affirmed the district court's grant of summary judgment in favor of Lockheed, and concluded that, "under the circumstances," the protective order was completely justified. Pet. App. 7a.

Following the Fourth Circuit's decision affirming the district court's ruling, Sharma filed a motion to stay execution of a judgment awarded in favor of Lockheed, pending his application to this Court for a writ of certiorari. Lockheed opposed such a stay. Apparently agreeing that there was no reasonable basis for granting certiorari, the same distinguished Fourth Circuit panel denied Sharma's motion for a stay.

REASONS FOR DENYING THE WRIT

I. The Court Does Not Have Jurisdiction To Decide The Issue Presented In Sharma's Petition Because It Is Moot And The Court's Decision On The Issue Would Have No Effect On The Outcome Of The Case.

As this Court recognized in *North Carolina v. Rice*, 404 U.S. 244, 246 (1971), "Mootness is a jurisdictional question because the Court 'is not empowered to decide moot questions or abstract propositions.' " The single issue raised in Sharma's Petition—the appropriateness of the protective order preventing Young's deposition—does not raise before the Court a live case or controversy. In effect, Sharma is asking the Court to render an advisory opinion, since the outcome of

the discovery controversy will not disturb the ultimate award of summary judgment to Lockheed on the breach of contract/§ 1981 allegations contained in Sharma's Third Cause of Action.

In addition to affirming that the protective order was justified under the circumstances, the court below also affirmed that Sharma's claims relating to the purchase of his Houston home were barred by the applicable three-year statute of limitations. Pet. App. 9a. Although the court below addressed the issue by analyzing Sharma's claim alternatively as a state breach of contract claim, the unchallenged decision applied equally to bar Sharma's § 1981 claim for discriminatory breach of the alleged agreement, because the same statute of limitations applied to the § 1981 claim, as well. *Grattan v. Burnett*, 710 F.2d 160, 163 (4th Cir. 1983), *aff'd*, 468 U.S. 42 (1984).

Sharma argues that the denied deposition of Young could have led to proof of disparate treatment relevant to his § 1981 allegations. However, even if this Court were to find that Young's deposition should have been allowed, and assuming Sharma could have uncovered evidence of disparate treatment through Young, the result in this case would not be altered. Sharma's Third Cause of Action still would have failed. Lockheed still would have received summary judgment on the issue of limitations, which Sharma does not challenge. Accordingly, the Court is without jurisdiction to address the issue presented by Sharma. As this Court has held, "federal courts are without power to decide questions that cannot affect the rights of the litigants in the case before them." *North Carolina v. Rice*, 404 U.S. at 246.

II. This Case Arises From A Mundane Discovery Dispute Which Does Not Involve Any New Or Important Legal Issues But Only A Challenge To The Application Of Familiar Legal Rules To The Particular Facts Of This Case.

The unpublished decision of the court below concerning the appropriateness of the protective order preventing Young's deposition turned on the particular facts of this case. In its holding, the Fourth Circuit stated: "*Under the circumstances*, the protective order was justified." Pet. App. 7a. (Emphasis added.)

The particular "circumstances" which the court below cites as the bases for its decision include the fact that "[b]y affidavit, the proposed deponent Robert Young stated that he does not personally know Sharma and has no personal knowledge regarding the allegations of Sharma's complaint." Pet. App. 7a. The particular "circumstances" also include the fact that the information sought was duplicative and more easily obtained from other sources, and, more specifically, that at the time the protective order was entered Lockheed had made available for deposition its Manager of Human Resources and had produced over 4,500 documents, including personnel files containing information on other relocated employees, which Sharma had not yet even reviewed. Pet. App. 7a.

The court below also relied on the fact that Sharma had not "undertaken the depositions of individuals directly involved with Sharma and implicated in the case." Pet. App. 7a. It specifically found that, among others, Sharma did not attempt to depose either "George Brown, the actual promisor, or the person

Brown allegedly charged with the task of making good on that promise." Pet. App. 7a-8a. Sharma had access to such individuals, but chose not to avail himself of their testimony.

Review by this Court would involve only questions of fact and discretion which two previous courts have resolved in favor of Lockheed. As this Court has ruled, "We do not grant a [writ of] certiorari to review evidence and discuss specific facts." *United States v. Johnston*, 268 U.S. 220, 227 (1925).

Since the decision below involved the application of particular facts in the context of a discovery dispute, it is all the more inappropriate for this Court's review by grant of a writ of certiorari. As this Court has held, "[J]udges should not hesitate to exercise appropriate control over the discovery process." *Herbert v. Lando*, 441 U.S. 153, 177 (1979). Furthermore, as all the circuits agree, consideration of specific facts to resolve discovery disputes are matters left to the broad discretion of the trial courts and are not matters to be second guessed by appellate courts. *Galella v. Onassis*, 487 F.2d 986, 997 (2d Cir. 1973); *Stich v. United States*, 730 F.2d 115, 117-18 (3d Cir. 1984), *cert. denied*, 469 U.S. 917 (1984); *Ardrey v. United Parcel Service*, 798 F.2d 679, 682 (4th Cir. 1986), *cert. denied*, 480 U.S. 934 (1987); *Blum v. Gulf Oil Corp.*, 597 F.2d 936, 938 (5th Cir. 1979); *Misco, Inc. v. U.S. Steel Corp.*, 784 F.2d 198, 200 (6th Cir. 1986); *Brown-Bey v. United States*, 720 F.2d 467, 470 (7th Cir. 1983); *Dabney v. Montgomery Ward & Co., Inc.*, 761 F.2d 494, 498 (8th Cir. 1985), *cert. denied*, 474 U.S. 904 (1985); *United States v. Meyer*, 398 F.2d 66, 74 (9th Cir. 1968); *Smith v. Ford Motor Co.*, 626 F.2d 784, 796 (10th Cir. 1980), *cert. denied*, 450 U.S. 918

(1981); *Farnsworth v. Proctor & Gamble Co.*, 758 F.2d 1545, 1547 (11th Cir. 1985); *Naartex Consulting Corp. v. Watt*, 722 F.2d 779 (D.C. Cir. 1983), *cert. denied*, 467 U.S. 1210 (1984).

III. The Decision Below Did Not Adopt Any New Or Special Rule, But Merely Applied Familiar Legal Rules Recognized By This Court And The Other Circuits.

Sharma's Petition grossly mischaracterizes the decision below as a departure from established legal rules. Contrary to Sharma's assertion, the court below applied familiar and generally accepted legal rules. Only the specific facts of this case distinguish it from others.

Sharma asserts that the decision below ignored the policy favoring broad discovery. This is not so. The decision below expressly reaffirmed that general policy and specifically stated that "in discrimination cases a particularly wide latitude should be afforded plaintiffs with respect to the relevance of the requested discovery, and the district court should not 'prevent a plaintiff from pursuing a theory or an entire cause of action.' " Pet. App. 6a. Considering the specific facts of this case, the court below determined that, notwithstanding the general rule favoring broad discovery, a protective order was justified.

Also contrary to the assertion in Sharma's Petition, the decision below does not put the burden on the party seeking discovery to justify a deposition. In this case the burden was placed on Lockheed, the party resisting discovery, to establish good cause for the protective order. Lockheed satisfied this burden by showing that the proposed deponent had no relevant

information, that there were alternative sources for the information sought, and that the deposition was to harass Lockheed by imposing an undue burden on its president. Ct. App. J.A. 445-46, 534. It was only after Lockheed had established good cause for the protective order that Sharma was required to rebut Lockheed's showing. Neither the district court nor the court below relied on any single factor; instead, both courts balanced three factors—relevance, burden, and the availability of alternative sources—and concluded that a protective order was justified. Pet. App. 6a-9a; Ct. App. J.A. 472.

Sharma's characterization of the decision below as creating a special standard for corporate presidents also is grossly inaccurate. The decision below makes clear that it is not creating a special standard or assuming that the deposition of corporate presidents is inherently burdensome. In fact, the decision expressly disclaims any such special standard:

> We do not hold that the deposition of a corporate president is inherently burdensome, even where lack of knowledge is claimed, if relevant information is likely to be obtained and is not readily available elsewhere. Pet. App. 8a.

Finally, in reviewing the appropriateness of the district court's protective order, the decision below applies the generally accepted standard of review. It recognizes that controlling discovery, including the issuance of protective orders, is a matter left to the discretion of district courts, and that such rulings by the district courts should not be overturned absent a clear abuse of discretion. Pet. App. 6a. This same

abuse of discretion standard is applied by every other Circuit in ruling on discovery issues. *Robertson v. National Basketball Association*, 622 F.2d 34, 36 (2d Cir. 1980); *Wisniewski v. Johns-Manville Corp.*, 812 F.2d 81, 90 (3d Cir. 1987); *Ardrey v. United Parcel Service*, 798 F.2d at 682; *Perel v. Vanderford*, 547 F.2d 278, 280 (5th Cir. 1977); *Chrysler Corp. v. Fedders Corp.*, 643 F.2d 1229, 1240 (6th Cir. 1981), *cert. denied*, 454 U.S. 893 (1981); *Deitchman v. E. R. Squibb & Sons, Inc.*, 740 F.2d 556, 563 (7th Cir. 1984); *Dabney v. Montgomery Ward & Co.*, 761 F.2d at 498; *Canadian American Oil Co. v. Union Oil Co. of California*, 577 F.2d 468, 473 (9th Cir. 1978), *cert. denied*, 439 U.S. 912 (1978); *Otero v. Buslee*, 695 F.2d 1244, 1247 (10th Cir. 1982); *Harden v. Adams*, 760 F.2d 1158, 1167 (11th Cir. 1985), *cert. denied, Grimmer v. Harden*, 474 U.S. 1007 (1985); *United Presbyterian Church in the U.S.A. v. Reagan*, 738 F.2d 1375, 1382 (D.C. Cir. 1984); *Watts v. Office of Personnel Management*, 814 F.2d 1576, 1581 (Fed. Cir. 1987), *cert. denied*, 108 S. Ct. 258 (1987).

IV. The Decision Below Does Not Offend Principles Of Fairness Because Sharma Had More Than Ample Opportunity For Discovery.

As the decision below recognized, Sharma had more than ample opportunity for discovery, and there were a number of alternative sources for the information which he sought. Pet. App. 7a-9a. The district court extended the discovery deadline no less than five times, allowing nearly ten months of discovery. Ct. App. J.A. 71-75, 221.1. As the decision below points out, at the time the protective order was issued, Lockheed already had produced over 4,500 documents, in-

cluding personnel records of other relocated employees, which Sharma had not reviewed. Pet. App. 7a. At the same time, Sharma was in the middle of the Rule 30(b)(6) deposition of Lockheed's Manager of Human Resources, and he never made any effort to conclude that deposition. Pet. App. 7a. Although, aside from Mr. Young, Sharma could have deposed anyone he wished, including any current or former employees of Lockheed, he chose to depose only one other individual, Barry Forster, his former department manager. As the decision below emphasized, Sharma did not even attempt to depose other individuals who were most intimately involved in his case and possessed relevant information. Pet. App. 7a. Also, despite the opportunity to do so, Sharma did not propound any interrogatories.

Sharma had numerous avenues for discovery available to him. Only one witness was placed beyond his reach, and that was Lockheed's president, Robert Young. Considering the volume of information which Lockheed made available to Sharma and Sharma's failure to pursue any of the many additional opportunities for discovery, Sharma cannot possibly complain that it offends any principles of fairness or justice to prevent the deposition of a single individual, who, by affidavit, had confirmed that he had no relevant information.

CONCLUSION

For these reasons, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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APPENDIX

APPENDIX A

LOCKHEED CORPORATION
SUBSIDIARIES AND AFFILIATES

SUBSIDIARIES

ANALYTYX ELECTRONIC SYSTEMS, INC.
ARTEMIS MANAGEMENT SYSTEMS HOLDINGS LIMITED
ARTEMIS MANAGEMENT SYSTEMS PTY. LIMITED
ARTEMIS MIDDLE EAST E.C.
AVICOM INTERNATIONAL, INC.
AVICOM INTERNATIONAL, INC., S.A.
BROPHY & ASSOCIATES, INC.
CADAM DEUTSCHLAND GmbH
CADAM INC.
CADAM INTERNATIONAL B.V.
CADAM PACIFIC, LTD.
CALCOMP A.B.
CALCOMP B.V.
CALCOMP CANADA, INC.
CALCOMP ESPANA S.A.
CALCOMP EUROPEAN MANAGEMENT CORPORATION
CALCOMP EUROPE LTD.
CALCOMP FOREIGN SALES CORPORATION
CALCOMP GmbH
CALCOMP, INC.
CALCOMP LIMITED
CALCOMP PACIFIC, INC.
CALCOMP S.A.
CALCOMP SANDERS CHINA LIMITED
CALCOMP S.p.A.
CALCOMP TECHNOLOGY AND PROCUREMENT, INC.

CALIFORNIA COMPUTER PRODUCTS, INC.
CSL LEASING CORPORATION
DATACOM COLLECTIONS SYSTEMS CORPORATION
DATACOM CONSULTANTS, INC.
DATACOM MUNICIPAL SYSTEMS OF OHIO, INC.
DATACOM MUNICIPAL SYSTEMS OF PENNSYLVANIA, INC.
DATACOM SYSTEMS (UK) LIMITED
FORJOHN LIMITED
HIGH POINT REALTY CORPORATION
HI-TENSION REALTY CORPORATION
IMAGE RESOURCE CORPORATION
LFC CREDIT CORPORATION
LOCKHEED AEROMOD CENTER, INCORPORATED
LOCKHEED AEROPARTS, INC.
LOCKHEED AIRCRAFT (ASIA) LIMITED
LOCKHEED AIRCRAFT (AUSTRALIA) PTY. LIMITED
LOCKHEED AIRCRAFT INTERNATIONAL LIMITED
LOCKHEED AIRCRAFT SERVICE-INTERNATIONAL
LOCKHEED AIRCRAFT SERVICE SINGAPORE PRIVATE LIMITED
LOCKHEED AIR TERMINAL, INC.
LOCKHEED AIR TERMINAL OF CANADA, INC.
LOCKHEED AIR TERMINAL OF NEW YORK, INC.
LOCKHEED AIR TERMINAL, S.A.
LOCKHEED CANADA INC.
LOCKHEED CHINA, INC.
LOCKHEED CORPORATION (INTERNATIONAL) S.A.
LOCKHEED DATACOM CORPORATION
LOCKHEED DATAPLAN, INC.
LOCKHEED ELECTRONICS COMPANY, INC.
LOCKHEED ENGINEERING & SCIENCES COMPANY
LOCKHEED FINANCE CORPORATION
LOCKHEED FOREIGN SALES CORPORATION
LOCKHEED GEORGIA INTERNATIONAL SERVICES, INC.
LOCKHEED INTERNATIONAL G.m.b.H.

LOCKHEED INTERNATIONAL LIMITED TAIWAN
LOCKHEED INTERNATIONAL SERVICE AND INVESTMENT CORPORATION
LOCKHEED MATERIALS PROCESSING COMPANY
LOCKHEED MISSILES & SPACE COMPANY, INC.
LOCKHEED MORTGAGE CORPORATION
LOCKHEED SHIPBUILDING COMPANY
LOCKHEED SPACE FLIGHT COMPANY
LOCKHEED SPACE OPERATIONS COMPANY
LOCKHEED SUPPORT SYSTEMS, INC.
LOCKHEED SYSTEMS COMPANY, INC.
LOCKHEED TECHNICAL ENTERPRISES CORPORATION
LOCKHEED TECHNICAL OPERATIONS COMPANY, INC.
LOCKHEED TECHNICAL SERVICES COMPANY, INC.
LOCKHEED WESTERN EXPORT COMPANY
LOCKPORT MARINE COMPANY
MARTEMIS SYSTEMS A.G.
MEMRYKORD LIMITED
METIER, INC.
METIER MANAGEMENT SYSTEMS BENELUX B.V.
METIER MANAGEMENT SYSTEMS DEUTSCHLAND GmbH
METIER MANAGEMENT SYSTEMS FRANCE S.A.R.L.
METIER MANAGEMENT SYSTEMS HOLDING B.V.
METIER MANAGEMENT SYSTEMS INC.
METIER MANAGEMENT SYSTEMS INTERNATIONAL LIMITED
METIER MANAGEMENT SYSTEMS INTERNATIONAL N.V.
METIER MANAGEMENT SYSTEMS ITALIA S.R.L.
METIER MANAGEMENT SYSTEMS LIMITED (Japan)
METIER MANAGEMENT SYSTEMS LIMITED (U.K.)
METIER MANAGEMENT SYSTEMS PTE. LTD.
METIER MANAGEMENT SYSTEMS SWEDEN AKTIEBOLSG

METIER SYSTEMS, LTD.
MURDOCK ENGINEERING COMPANY
NIPPON CALCOMP KK
N.V. CALCOMP S.A.
SANDERS ASSOCIATES, INC.
SANDERS ASSOCIATES INTERNATIONAL, INC.
SANDERS DEVELOPMENT CORPORATION
SANDERS SECURITIES CORPORATION
STAR RECONVEYANCE CORPORATION
TERAK CORPORATION
TRISTAR PARTS, LTD.

AFFILIATES

AIROD SDN BHD
CADAM FRANCE SARL
CADAM SERVICES COMPANY
GULF TECHNOLOGY SYSTEMS GROUP
LAH LTD.
LETLOCK SAUDI ARABIA CO. LTD.
LOCKHEED-ARABIA
LOCKHEED TECHNICAL SERVICES (MALAYSIA) S.B.
PACIFIC AEROSPACE CORPORATION LIMITED
TRANSNATIONAL HOUSING COMPANY

NON-PROFIT CORPORATION

LOCKHEED LEADERSHIP FUND

Supreme Court, U.S.
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MAR 8 1989
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No. 88-1294

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REPLY TO RESPONDENT'S BRIEF IN OPPOSITION

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

No. 88-1294

PRAMOD K. SHARMA,
Petitioner,

v.

LOCKHEED ENGINEERING and
MANAGEMENT SERVICES COMPANY, INC.,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

REPLY TO RESPONDENT'S BRIEF IN OPPOSITION

1. In an effort to persuade the Court that the questions raised in Mr. Sharma's Petition are moot, respondent Lockheed has represented to the Court that the *only* count of Mr. Sharma's complaint raised before the Fourth Circuit was his breach of contract/42 U.S.C. § 1981 count (Third Cause of Action) and that that count is barred by Maryland's three-year statute of limitations. Respondent's Brief in Opposition ("Opp.") at 5. This representation is *completely false.* In fact, the Fourth Circuit explicitly recognized that Mr. Sharma's contention that he was improperly denied the opportunity to obtain discovery applied to *both* his Title VII

and § 1981 causes of action and that only Mr. Sharma's claim for intentional infliction of emotional distress had not been appealed to the court. Pet. App. 6a, 3a.

Moreover, the Fourth Circuit found *only* Mr. Sharma's state breach of contract contention to be barred by Maryland's statute of limitations; the Court dismissed his § 1981 and Title VII claims on summary judgment grounds due to Mr. Sharma's alleged failure to factually support his discrimination claims. And even assuming that the Maryland limitations statute would apply to the § 1981 claims—a finding the court below never made—*in no event* would that statute bar Mr. Sharma's Title VII claim. Indeed, there can be no dispute on this record that the Title VII claim was timely filed within 90 days of Mr. Sharma's receipt of a right to sue letter from the EEOC. Ct. App. J.A. at 19, 8-18.

Thus, once Lockheed's grossly unfounded jurisdictional argument is set aside, the questions raised in Mr. Sharma's Petition are plainly not moot, particularly in light of the acknowledgment by the court below that had Mr. Sharma been given the opportunity to depose Lockheed's president, "evidence might have been adduced" to support Mr. Sharma's Title VII claim. Pet. App. 7a.

2. Lockheed also misstates the record on significant points affecting the questions presented. For example, Lockheed characterizes Adrienne Allen's deposition testimony as stating that she was familiar with Lockheed's relocation policies and that Lockheed had not purchased any employee's home upon transfer. Opp. at 6. Yet, the court below specifically found that Ms. Allen "stated that she was not familiar with personnel procedures in Houston [the facility from which Mr. Sharma was transferred] and that she did not know if Lockheed had ever paid for an employee's house when he was transferred from one facility to another." Pet. App. 4a-5a. Lockheed also asserts that Mr. Sharma "was afforded every rea-

sonable opportunity to obtain facts to support his claim." Opp. at 5. Yet, as explained in Mr. Sharma's Petition, the district court not only denied Mr. Sharma the opportunity to take the deposition of Lockheed's president, it also denied Mr. Sharma additional time to depose, among others, George Brown, his supervisor at the Maryland facility. Pet. at 6, 11, 15.

3. In an effort to justify these denials, Lockheed's counsel simply asserts, without citing any support in the record, that "Lockheed has never purchased the home of any similarly situated employee." Opp. at 6. But this, of course, is the central factual question as to which Mr. Sharma was denied fair and equal discovery rights and upon which summary judgment was entered against him. Counsel's after-the-fact representations cannot resolve that factual question, cannot cure the denial of discovery, and cannot justify the entry of summary judgment.

For the reasons set forth here and in Mr. Sharma's Petition, this Court should grant the writ and reverse the decision below.

Respectfully submitted,

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